

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.946/Bang/2019
Assessment Year: 2008-09

M/s. Centum Electronics Ltd. #44, Ground Floor, KHB Industrial Area Yelahanka New Town Bengaluru 560 106 PAN NO : AAKCS7429L	Vs.	Deputy Commissioner of Income-tax Circle-2(1)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Ramasubrammaniam, A.R.
Respondent by	:	Shri Srinath Sadanala, D.R.

Date of Hearing	:	13.12.2021
Date of Pronouncement	:	31.01.2022

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the CIT(A) Bengaluru-2 dated 28.2.2019 for the assessment year 2008-09. The grounds of appeal raised by the assessee in this appeal are reproduced as follows:-

1. *That the order of the learned Commissioner of Income-Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*
2. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in justifying the action of the assessing officer in passing an order against M/s. Solectron EMS India Ltd even though the said entity does not exist on the date of the passing the order.*
3. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the action of the assessing officer in passing an assessment order against a non-existing person.*
4. *That the order u/s 147 is without jurisdiction.*

5. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the finding of the assessing officer that M/s. Centum Electronics Ltd can be proceeded against in respect of matters connected with Solectron EMS India Ltd just because Solectron EMS India Ltd was amalgamated with Centum Electronics Ltd.*
6. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the action of the assessing officer that in proceeding against Centum Electronics Ltd even though the income alleged to have escaped assessment was not earned by Centum Electronics Ltd.*
7. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not adjudicating the ground on forming a belief that income of Solectron EMS India Ltd has escaped assessment without any tangible material and the formation of such a belief is a mere change of opinion which is not permissible in law.*
8. *That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not adjudicating the matter on merits.*
9. *That the learned Commissioner of Income Tax (Appeals) ought to have held that the consumables expenditure of Rs. 34,99,559 and the freight of Rs. 10,23,619 are not the expenditure incurred by DTA unit but by EHTP unit.*
10. *That the learned Commissioner of Income Tax (Appeals) ought to have held that the finding of the learned assessing officer that the consumable expenditure of Rs. 34,99,559 and the freight expenditure of Rs. 10,23,619 are expenses incurred by EHTP unit is perverse as not supported by any materials on record and is in fact contrary to the materials on record.*
11. *That the learned Commissioner of Income Tax (Appeals) ought to have reduced the profits of EHTP unit by a sum of Rs. 45,23,178 (Rs. 34,99,559 + 10,23,619).*
12. *That the learned Commissioner of Income Tax (Appeals) ought to have reduced the subcontracting charges, travelling expenses and the bank charges from export turnover for the purpose of calculation of deduction u/s 10B of the Act.*
13. *That the learned Commissioner of Income Tax (Appeals) ought to have reduced the freight from export turnover while calculating deduction u/s 10B of the Act even though the expenses was incurred in INR.*
14. *Without prejudice to above grounds, that the learned Commissioner of Income Tax (Appeals) ought to have reduced the total turnover, by the sum of Rs. 4,05,87,484/- being the amount reduced from export turnover.*
15. *That the learned Commissioner of Income Tax (Appeals) ought to have considered the claim for extra depreciation, extra credit for TDS and wrong disallowance u/s 40(a)(ia) of the Act.*

At the outset, the Ld.AR submitted that Ground Nos. 1-3 are in respect of validity of the reassessment order passed which goes to the root of the case. We therefore first deal with the legal issue raised by assessee in ground nos. 1-3.

2. Brief facts of the case to consider the legal issues are as under.

There was a company called Solectron EMS India Ltd. It filed the return of income for AY 2008-09 and was assessed to income tax by the then Asst. Commissioner, Circle 12(2), Bangalore. M/s. Solectron EMS India Ltd. was carrying on its manufacturing activities in a unit set up under Electronic Hardware Technology Park (EHTP) scheme. It was manufacturing electronic products and exporting them. It was rendering services to various customers in India from a Domestic Tariff Area unit (DTA unit for short). Assessment was completed on 23.12.2010 for the AY 2008-09 by disallowing the claim u/s. 10A of the Act amounting to Rs.13,07,508. The assessee filed an appeal before CIT(A) who dismissed the appeal.

2.1 It was stated that when the assessment order was passed, M/s. Solectron EMS India Ltd. merged with M/s. Centum Electronics Ltd., as per the order of the *Hon'ble Karnataka High court* by order dated 16.7.2010. Therefore, the appeals were filed in the name of Centum Electronics Ltd. When the matter stood thus, the Ld.DCIT, Circle 11(2), Bangalore issued notice/s 148 of the Act to M/s. Centum Electronics Ltd. M/s. Centum Electronics Ltd. filed a letter dated 25.3.2013 wherein it was stated that the return in response to sec.148 has been filed on 20/03/2013. It also sought a copy of the recorded reasons. The Ld.AO furnished the copy of the recorded reasons vide his letter dated 3.4.2013. M/s. Centum Electronics Ltd. filed its objections on 27.4.2013. The Ld. A.O. disposed off the objections vide communication dated 15.5.2013. M/s. Centum Electronics Ltd. filed

a writ petition before the *Hon'ble Karnataka High Court*, wherein the validity of the notice issued u/s 148 was challenged.

2.2 During the pendency of writ petition, a reassessment order was passed on 5.3.2014. The Hon'ble High Court disposed off the writ petition vide its order dated 30/10/2014 by quashing the reassessment order passed on 5.3.2014, and restored the matter back to the files of the Ld.AO. After hearing the assessee, the Ld. DCIT, Circle 2(1)(1), Bangalore who possessed jurisdiction over Centum Electronics Ltd., passed the reassessment order on 21.3.2016.

2.3 During the reassessment proceedings, the assessee informed the Ld.AO that M/s. Solectron EMS India Ltd. has been merged with Centum Electronics Ltd. and Solectron EMS India Ltd. does not exist in the eye of law anymore. The Ld.AO in paragraph 3 of the assessment order held that any proceedings in the name of Solectron EMS India Ltd. shall be with M/s. Centum Electronics Ltd. However, the assessment order was passed in the name of "M/s. Solectron EMS India Ltd. (since merged with M/s. Centum Electronics Ltd.)".

2.4 In the reassessment order dated 21.3.2016, the PAN was quoted as "AAKCS7429L". It is submitted that this PAN is the PAN of M/s. Solectron EMS India Ltd. The Ld.AR thus submitted that, it is clear that, the assessment has been made in the name of Solectron EMS India Ltd. The facts stated above prove that M/s. Solectron EMS India Ltd. does not exist as an entity w.e.f. 1.4.2009 being the appointed date as per the decision of the *Hon'ble Karnataka High Court* dated 16.7.2010. He submitted that it is now well settled that assessment order cannot be passed in the name of amalgamating/transferor-company. The Ld.AR has relied on the following decisions:

a) *Marshall Sons & Co. (India) ltd. Vs. ITO reported in 223 ITR 809 (SC)*

- b) *CIT & Another Vs. Intel Technology India (P) Ltd. reported in 380 ITR 272 (Kar)*
- c) *Principal CIT Vs. Nokia Solutions & Network India Pvt. Ltd. reported in 402 ITR 21 (Del)*
- d) *Emerald Company Ltd. Vs. ITO reported in 46 ITR (Trib) 619*

2.5 The Ld.AR submitted that in all the above cases it is held that an assessment cannot be made on a non-existent company. It is clear from the reassessment order that the assessment had been made in the name of Solectron EMS India Ltd. which is a non-existent as on the date of passing of the reassessment order. The Ld.AR thus submitted that the assessment order passed on a non-existent entity is a nullity and therefore, the same is required to be quashed. He further held that such an order passed is without any jurisdiction and deserves to be set aside.

2.6. In support of his argument, he also relied on the decision of the decision of *Hon'ble Supreme Court* in case of *PCIT vs Maruti Suzuki India Ltd* reported in 416 ITR 613. He also referred to the decision of *Hon'ble Supreme Court* in case of *CIT vs Spice Infotainment Ltd* in *Civil Appeal No. 285 of 2014 by order dated 02/11/2017*, wherein the appeals by the revenue against the decision of *Hon'ble Delhi High Court* in *ITA No. 475 of 2011 dated 03/08/2011* were dismissed.

2.7. On the contrary, the Ld. CIT (DR) vehemently submitted that the assessee merged into another company and the notice under section 148 was correctly issued and assessee appeared before the Ld.AO. He further stated that assessee is not at all aggrieved by mere mention of the name of the assessee prior to its merger.

2.8. With respect to this argument of the Ld.Sr.DR that notice under section 148 was issued in the name of merged company, the Ld.AR referred to paragraph No.1 of the order of the *Hon'ble Delhi High Court* in case of *Spice Infotainment Ltd(supra)* and, therefore, submitted that

the impugned assessment order does not stand the test of the law. *Hon'ble Court* also held that mere participation in assessment proceedings by the appellant would be of no effect as there is no estoppel against law.

3. We have perused the submissions advanced by both sides in light of records placed before us.

We find that the 'Solectron EMS India Ltd.,' was merged with 'Centrum Electronics Ltd' vide order of the *Hon'ble Karnataka High Court dated 16/07/2010*, wherein the scheme of merger under sections 391 to 394 of the Companies' Act, 1956 was approved and such scheme became operative from 01/04/2009. In view of this, it is apparent that 'Solectron EMS India Ltd.' ceased to exist by virtue of this order with effect from 01/04/2009.

3.1. The above fact has also been recorded by the Ld.AO in the assessment order passed on 21/03/2016. The Ld.AO, passed Assessment order in the name of "Solectron EMS India Ltd. (Since Merged with Centrum Electronics Ltd)". Thus, it is clear that as on the date of passing of assessment order dated 21/03/2016, in the name of "Solectron EMS India Ltd.' was not at all in existence as it had already merged with 'Centrum Electronics Ltd.' Such an assessment order passed on nonexistent company is invalid.

3.2. *Hon'ble Supreme Court*, while deciding the identical issue in the case of *Maruti Suzuki India Ltd (supra)*, held that assessment order passed on a nonexistent entity is without jurisdiction and deserves to be set aside. Fact of the case before the *Hon'ble Supreme Court* clearly shows that the notice under section 143(2) of the Act was issued in the name of amalgamating company and not the name of amalgamated company. In this case, similar notice dated 05/09/2014

was also issued in the name of a nonexistent entity. However, though this notice was issued prior to the 'appointed date', would not make any difference. Even the participation by the assessee in the assessment proceedings would also not make any difference because the facts remains that the assessment order has been passed by the assessing officer in the name of a nonexistent company. *Hon'ble Supreme court* held as under :-

"33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment (supra) on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment (supra). 34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

Thus, the issue is squarely covered in favour of the assessee by the decision of the *Hon'ble Supreme Court* in case of *Maruti Suzuki India Ltd (supra)*.

3.3. In view of this, we hold that assessment order passed by the assessing officer in the name of a non existing company, despite

having prior information provided by the assessee and such facts recorded in the assessment order, suffers from jurisdictional defect and, therefore, same deserves to be quashed.

Accordingly Ground 1-3 of the appeal stands allowed.

All other grounds raised on merits become academic at this stage.

In the result appeal filed by assessee stands allowed on the legal issue raised.

Order pronounced in the open court on 31st Jan, 2022.

**Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER**

**Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER**

Bangalore,
Dated 31st Jan, 2022.
VG/SPS

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore